Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1606 OF 2007
IN
SUIT NO.476 OF 2004

Akhtar Hasan Rizvi ...Plaintiff
V/s.
Bharat Petroleum Corporation Ltd. ...Defendants

Mr.G.S. Hegde, Advocate, i/b. R.R. Kalekar, for the Plaintiff.

Mr.S.R. Page, Advocate, for the Defendants.

CORAM : ABHAY S. OKA, J.
DATE : 1ST NOVEMBER, 2007.

P.C.:

1. Heard the learned Counsel appearing for the plaintiff in support of the Chamber Summons and Shri.Page, learned Counsel, appearing for the defendants who has opposed the Chamber Summons.

2. This Suit is filed for declaration that agreement dated 24th October, 1974 for sale of the suit property executed by the defendants in favour of the original plaintiff No.3 is valid and subsisting. Prayer is also made for specific performance of the said agreement.

3. It appears that during the pendency of the

Suit, the plaintiff (original plaintiff) was dispossessed on the basis of order passed under the Public Premises (Eviction) Act. By the present Chamber Summons, the plaintiff essentially wants to claim a decree for possession. The plaintiff also wants to add a paragraph regarding vesting of the assets of M/s.Burmah Shell Oil Storage & Distribution Company of India Limited in the present defendants for the purposes of asserting that the defendants are duty bound to perform the obligations of the aforesaid company under the suit agreement.

4. The opposition to the Chamber Summons is mainly on the ground that the alleged suit agreement was executed in favour of the original plaintiffs whose names have been deleted. The second objection is that the order for eviction passed against the plaintiff has been confirmed even by the Apex Court and in view of the said order, now the plaintiff cannot claim possession.

5. Perusal of the clause (a) of the schedule to the Chamber Summons shows that the plaintiff wants to add a paragraph incorporating factual assertions as to how the defendants are allegedly bound by the obligations of M/s.Burmah Shell Oil Storage &

Distribution Company of India Limited under the suit agreement. Clause (b) of the Chamber Summons is for incorporation of the averments regarding dispossession of the plaintiff by the Estate Officer and for incorporating a contention that the plaintiff has right to remain in possession of the property on the basis of the suit agreement. The remaining part of the text of the amendment is for addition of prayer for possession, prayer for appointment of Receiver and injunction.

6. Perusal of the text of the amendment shows that the proposed amendment will not change the nature of the Suit. The amendment is not inconsistent to the averments made in the plaint and prima-facie the amendment does not appear to be barred by the limitation. If the amendment is allowed, the defendants can raise all permissible contentions by filing additional written statement.

7. Hence, Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out within eight weeks. Copy of the amended plaint shall be served to the defendants within a period of four weeks from the date of which amendment is carried out. Within eight weeks from the date of which the

amended plaint is served, it will be open for the defendants to file written statement to the amended plaint.

8. There will be no order as to costs.

[ABHAY S. OKA, J.]